87-648

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

(1)

COMMONWEALTH OF PENNSYLVANIA,
Petitioner

v.

MICHAEL CEPHAS,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

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October 19, 1987

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QUESTIONS PRESENTED

1. Where the police act in good faith, scrupulously comply with all of Miranda's requirements, and a suspect makes what objectively and reasonably appears to be a valid Miranda waiver, should that suspect's subsequent voluntary statement be suppressed simply because he did not subjectively understand the Miranda warnings?

2. Does the fifth amendment exclusionary rule require suppression of evidence where there has been no police illegality and suppression will serve no deterrent purpose?

3. Does the Johnson v. Zerbst formula, requiring the "intentional relinquishment or abandonment of a known right" when a criminal defendant waives "fundamental constitutional rights," apply to Miranda's prophylactic rule?

TABLE OF CONTENTS

	PAGE
Questions Presented	i
Table of Authorities	iv-v
Opinions Below	2-3
Statement of Jurisdiction	3
Constitutional Provisions Involved	3-4
Statement of the Case	4-10
Reasons for Granting the Writ	
Where the police act in good faith and fully comply with Miranda, a suspect's voluntary statement should not be suppressed simply because subsequent psychiatric evidence establishes that the suspect did not subjectively understand the Miranda warnings.	11-22
Conclusion	23
Appendix A:	
Judgment and Order of the Supreme Court of Pennsylvania	1A
Appendix B:	
Judgment and Opinion of the Superior Court of Pennsylvania on Reconsideration	1B-16B

PAGE

Appendix C:

Judgment and Opinion of the Superior Court of Pennsylvania 1C-15C

Appendix D:

Oral Findings of Fact and Conclusions of Law of the Court of Common Pleas of Philadelphia County 1D-10D

TABLE OF AUTHORITIES

	PAGE
Federal Cases	
Colorado v. Connelly, 107 S.Ct. 515 (1987)	10,13, 14,17,18
Johnson v. Zerbst, 304 U.S. 458 (1938)	14,15,16
Lego v. Twomey, 404 U.S. 477 (1972)	13
Massachusetts v. Sheppard, 468 U.S. 981 (1984)	21
Miranda v. Arizona, 384 U.S. 436 (1966)	passim
Moran v. Burbine, 106 S.Ct 1135 (1986)	15
New York v. Quarles, 467 U.S. 649 (1984)	13,15, 17,20-21
North Carolina v. Butler, 441 U.S. 369 (1979)	15-16
Oregon v. Elstad, 470 U.S. 298 (1985)	17,21
Patterson v. Illinois, No. 86-7059 (cert. granted October 13, 1987)	16
Pennsylvania v. Henderson, 446 U.S. 905 (1980)	2
United States v. Leon, 468 U.S. 897 (1984)	21

PAGE

State Cases

Commonwealth v. Britton, 509 Pa. 620, 506 A.2d 895 (1986) 2

Commonwealth v. Cephas, ___ Pa. Super. ___, 522 A.2d 63 (1987) 14

Dayton v. Dayton, 509 Pa. 632, 506 A.2d 901 (1986) 2

Federal Constitution

U.S. Const. amend. V 3

U.S. Const. amend. XIV 4

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OCTOBER TERM, 1987

COMMONWEALTH OF PENNSYLVANIA,
Petitioner

v.

MICHAEL CEPHAS,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

Petitioner, the Commonwealth of Pennsylvania, respectfully requests that a Writ of Certiorari issue to review the final Judgment and Opinion of the Superior Court of Pennsylvania, which is the highest state court to render a decision in this case.

The Pennsylvania Superior Court entered its decision on reconsideration on March 4, 1987. Petitioner then timely applied to the Pennsylvania Supreme Court

for discretionary state court review. By Order dated August 20, 1987, and entered September 1, 1987, the Pennsylvania Supreme Court denied review (Order attached as Appendix A). Because under Pennsylvania law the Supreme Court's Order was not a decision on the merits,[1] the writ of certiorari, if granted, is appropriately directed to the intermediate state appellate court.[2]

OPINIONS BELOW

The Judgment and Opinion of the Pennsylvania Superior Court, which are unofficially reported at 522 A.2d 63 (1987), are set forth in full in Appendix B at 1B-16B. The unreported Judgment and Opinion of the

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[1] Commonwealth v. Britton, 509 Pa. 620, 506 A.2d 895 (1986); Dayton v. Dayton, 509 Pa. 632, 506 A.2d 901 (1986).

[2] See e.g. Pennsylvania v. Henderson, 446 U.S. 905 (1980).

Superior Court which were filed on December 15, 1986 but withdrawn on January 26, 1987, are set forth in full at Appendix C at 1C-15C. The Oral Findings of Fact and Conclusions of Law by the Philadelphia Court of Common Pleas, entered on July 25, 1984, are set forth in full in Appendix D at 1D-10D.

STATEMENT OF JURISDICTION

The Superior Court of Pennsylvania entered Judgment on March 4, 1987. The Pennsylvania Supreme Court, by Order dated August 20, 1987, but entered on September 1, 1987, declined to exercise authority in this case.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment Five, which provides in pertinent part:

> No person ... shall be compelled in any criminal case to be a witness against himself ...

United States Constitution, Amendment Fourteen Due Process Clause, provides:

> ... [n]or shall any state deprive any person of life, liberty, or property, without due process of law ...

STATEMENT OF THE CASE

On September 29, 1983, a young retarded woman was raped inside the chapel of the Temple University Hospital. Based on information from the victim, Philadelphia police located respondent, arrested him and transported him to the Police Department Sex Crimes Unit (N.T. 4/5/84, 18). While at the Sex Crimes Unit, Officer Frank Potts interviewed respondent regarding standard biographical information. Following this interview, Officer Potts placed respondent in a detention room where respondent was provided with soda and cookies as he had requested (id. at 36-41, 61).

Twenty minutes later, Police Officer Carol Keenan escorted respondent from the detention room to her lieutenant's office. There she properly advised him of his constitutional rights, and informed him that he was being questioned concerning the rape inside the Temple University Hospital Chapel on September 29, 1983 (id. at 44). Respondent's answers to questions concerning his constitutional rights, as they appear on the standard police interrogation card, indicated to Officer Keenan that he understood his rights and voluntarily wanted to waive them. Although respondent had previously been acting out, and had claimed to be the District Attorney's son (id. at 58-59), his demeanor when answering the Miranda questions appeared normal and calm (id. at 43-44, 56).

Respondent's statement revealed information consistent with the victim's physical description. When asked, however, if he

met a young lady the previous week and had sex with her inside the Chapel, respondent became evasive and responded, "No, most likely I did not" (id. at 53-56).

Given respondents' evasive answer, Keenan ceased questioning and returned him to the detention room. She then told respondent that she was going to seek the victim's identification of him through use of a photo spread (id. at 57-58, 62). The victim, however, was unable to make an identification.

Officer Keenan returned forty-five minutes later and found respondent yelling and kicking the door. When she opened the door and removed respondent from the room, his calm demeanor returned. Officer Keenan next took respondent to the lieutenant's office and rewarned him. He again gave the appropriate responses to her questions concerning his understanding of his Miranda rights, and indicated that he wished to

make a statement (id. at 58-60). He agreed to sit down to give the statement once police complied with his request for a cigarette (id. at 60-61).

Respondent then asked Officer Keenan whether the rape victim had identified him. When Officer Keenan refused to answer directly, respondent became very serious and began to talk about the rape (id. at 62). Although he had been acting in a strange fashion while in the detention room, he was calm during questioning and spoke in a normal tone of voice (id. at 71). Keenan believed from that demeanor that he understood his constitutional rights when he waived them (id. at 74). The statement which followed, although exculpatory on its face, contained details only the rapist would have known (id. at 62-65). For example, it correctly stated that the victim was a black girl, in her

early twenties, and walked with a limp (id. at 64).

After the interview ended, respondent refused to sign the interview sheet. He explained that he did not want to be forced, and that he would just tell the judge that this was his statement (id. at 62-65, 66-67).

Respondent moved to suppress his statements on the ground that he was not competent to waive his Miranda rights. At the suppression hearing, he did not testify or present any evidence contradicting the above-stated evidence offered by the police officers. Rather, respondent relied exclusively on psychiatric evidence to support a claim of incompetency. Respondent's witness, Dr. Perry Berman, a consultant for the Defender Association, offered the general conclusion that respondent's mental illness prevented him "from being able to really understand and/or act on what he

understood in the [Miranda] warnings," and contended that respondent "did not have the capacity to refrain or restrict himself" in talking to the police (id. at 124, 140).

On April 19, 1984, the Honorable Bernard J. Avellino, of the Philadelphia Court of Common Pleas, granted respondent's motion to suppress and subsequently made oral findings to support his ruling. Judge Avellino specifically found that respondent did not properly waive his Miranda rights.

On December 15, 1986, the Superior Court panel affirmed the trial court, holding that whether the police complied with Miranda was "irrelevant." It further ruled that a voluntary statement must be suppressed if the defendant was "incompetent" to make a knowing and intelligent waiver of his Miranda warnings. The Commonwealth timely sought panel reconsideration or full Superior Court review of the panel's order, in light of this Court's decision in

Colorado v. Connelly, 107 S.Ct. 515 (1987). On reconsideration, the panel affirmed the suppression order, stating that Connelly only concerned the voluntariness of a statement and did not affect the distinct issue of whether a defendant knowingly and intelligently waived his Miranda rights. Petitioner timely asked the Pennsylvania Supreme Court to allow an appeal. By an Order dated August 20, 1987, but entered September 1, 1987, the Pennsylvania Supreme Court denied review. This timely petition for a writ of certiorari followed.

REASONS FOR GRANTING THE WRIT

WHERE THE POLICE ACT IN GOOD FAITH AND FULLY COMPLY WITH MIRANDA, A SUSPECT'S VOLUNTARY STATEMENT SHOULD NOT BE SUPPRESSED SIMPLY BECAUSE SUBSEQUENT PSYCHIATRIC EVIDENCE ESTABLISHES THAT THE SUSPECT DID NOT SUBJECTIVELY UNDERSTAND THE MIRANDA WARNINGS.

This Court should grant certiorari to consider an important question in Miranda jurisprudence: whether, despite full compliance with Miranda's requirements and good faith police conduct, a voluntary statement must be suppressed because a suspect subjectively did not understand the prophylactic warnings. Because exclusion of a voluntary statement obtained in the absence of police misconduct serves no valid Miranda purpose, does not vindicate any constitutional right, and will needlessly obstruct the truth seeking process, this Court must grant review.

Here, the undisputed and credited evidence established that the police scrupulously followed the law. Detective Keenan twice gave respondent full Miranda warnings. When questioned as to his understanding of the Miranda warnings, respondent twice gave appropriate responses indicating his desire to speak with the police. The detective took statements from respondent only after she believed that he had made valid Miranda waivers.

The detective's belief was objectively reasonable. When respondent made his statements, he evidenced an understanding of his legal situation. Respondent knew that the people questioning him were police and that he was being questioned as a rape suspect (N.T. 4/5/84, 159-60). He showed appropriate concern that the victim would identify him as the rapist (id. at 62-67), and further showed a reasonable understanding

of the judicial process, including the role of a judge (id. at 66).

Under these circumstances, suppression of respondent's voluntary confession is senseless. The goal of Miranda, and the exclusionary rule in general, is to deter police misconduct.[3] Here, where there was no police misconduct and the detective scrupulously complied with all requirements

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[3] See Colorado v. Connelly, 107 S.Ct. 515, 524 (1987) ("Miranda protects defendants against government coercion leading them to surrender rights protected by the Fifth Amendment, it goes no further than that"); New York v. Quarles, 467 U.S. 649 (1984) (where statement taken during custodial interrogation was not the result of police misconduct, but rather the result of officer's concern for public safety, this Court creates public safety exception to Miranda and refuses to presume that statement is compelled because offered without Miranda warnings); Lego v. Twomey, 404 U.S. 477, 489 (1972) (since exclusionary rules are aimed at deterring lawless conduct by police, admissibility requirements should not be escalated where it would not increase the deterrence function sufficiently to outweigh "the public interest in placing probative evidence before juries for the purpose of arriving at truthful decisions about guilt or innocence").

of the law,[4] exclusion of this confession serves no conceivable deterrence function.

The Pennsylvania ruling requiring suppression simply because a suspect does not subjectively understand the Miranda warnings does not vindicate any constitutional right.[5] In Johnson v. Zerbst,[6] this Court held that a defendant may waive a "fundamental constitutional right" only where there is an "intentional relinquishment of a known right." The determination of whether there has been such a waiver of

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[4]There is, of course, no per se prohibition on police questioning of a suspect with a mental illness. Cf. Colorado v. Connelly, supra (upholding statement by a defendant with history and symptoms of mental illness similar to petitioner here).

[5]The Pennsylvania Court held that "the court must ... focus on cognitive factors to determine if the waiver was knowing and intelligent -- i.e. whether the defendant was aware of the nature of the choice that he made by giving up his Miranda rights." Commonwealth v. Cephas, infra at 12B.

[6]304 U.S. 458 (1938).

a constitutional right requires an evaluation of "the particular facts and circumstances surrounding that case, including the background, experience and conduct of the accused." Johnson v. Zerbst, 304 U.S. at 464.

While this focus on a criminal defendant's subjective state of mind is proper with respect to fundamental constitutional rights, such as the right to a jury trial, or at a guilty plea, it makes no sense to apply it to Miranda warnings. Miranda warnings are not themselves constitutionally protected rights. See Moran v. Burbine, 106 S.Ct. 1135, 1143 (1986); New York v. Quarles, 476 U.S. 649, 654 (1984). There is thus no constitutional basis for requiring a Johnson v. Zerbst analysis of a defendant's subjective state of mind in determining whether there has been a proper Miranda waiver. See North Carolina v. Butler, 441 U.S. 369, 376-77 (1979) (Blackmun,

J., concurring) ("My joinder [in the opinion of the Court] ... rests on the assumption that this court's citation to Johnson v. Zerbst is not meant to suggest that the 'intentional relinquishment or abandonment of a known right' formula ... has any relevance in determining whether a defendant has waived his 'right to the presence of a lawyer' under Miranda prophylactic rule.") (citations omitted).[7]

Nor is a subjective Miranda waiver formula necessary to ensure that a defendant's fifth amendment rights are protected. The fifth amendment is violated only if there is "governmental coercion" which compels

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[7]On October 13, 1987, this Court granted certiorari in a case which raises an analogous issue concerning the relationship of the Johnson v. Zerbst waiver formula to the Miranda warnings. See Patterson v. Illinois, No. 86-7059 (cert. granted October 13, 1987). In Patterson, the issue presented is whether the Miranda warnings are alone sufficient to permit a proper waiver of the sixth amendment right to counsel in a post-indictment interrogation.

self-incrimination. See Colorado v. Connelly, 107 S.Ct. at 523. Here, however, the Pennsylvania courts have essentially held that, even where there is no governmental coercion and where a defendant's statement is in fact voluntary, the fifth amendment rights can only be protected if the defendant intelligently understood each Miranda warning.[8] This Court, however, has rejected the position that a custodial statement should be automatically invalidated under the fifth amendment simply because a suspect did not have knowledge of his Miranda rights before being

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[8]After ruling that defendant's Miranda waiver was invalid, the trial court additionally concluded that police "manipulated" defendant by complying with his requests for food, drink and a cigarette, and, therefore, that his statements were not voluntary. To the extent the trial court's findings suggest involuntariness, they are wholly unsupported by the record. The Superior Court did not consider the voluntariness issue, resting its decision on the validity of defendant's Miranda waiver.

interrogated. See New York v. Quarles, supra (rejecting the argument that unwarned statements should be presumed compelled). See also Oregon v. Elstad, 470 U.S. 298 (1985) ("the mere fact that a suspect has made an unwarned admission does not warrant a presumption of compulsion").

The fifth amendment does not protect a defendant from a confession which is the product of his mental state. See Colorado v. Connelly, supra. The Pennsylvania Superior Court ruled that Connelly only applied to the issue of voluntariness and was irrelevant to the issue of whether defendant made a "knowing and intelligent" Miranda waiver.[9] This distinction is

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[9]The facts in Connelly are strikingly similar to this case. At the time of his confession, Connelly was diagnosed as a long-standing chronic paranoid schizophrenic, and he was delusional. The court-appointed psychiatrist testified that,

(footnote 9 continued)

specious. This Court has never held that a defendant can suppress a statement under Miranda merely by claiming that his mental problems vitiated his knowledge or intelligence rather than his voluntariness. On the contrary, the critical point is that Miranda, the fifth amendment, and due

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(footnote 9 continued)

> '[W]hen he was read his Miranda rights, he probably had the capacity to know that he was being read his Miranda rights [but] he wasn't able to use that information because of the command hallucinations that he had experienced.'

Connelly, supra, 107 S.Ct. at 526. There was also evidence of the arresting officer's knowledge of Connelly's mental illness. Id., 107 S.Ct. at 529 n.3. Based on this evidence, the trial court held that Connelly's waiver of his Miranda rights was not "voluntary, knowing and intelligent" because his confession was not the product of Connelly's "rational intellect" and "free will." The Colorado Supreme Court affirmed this suppression order, likewise ruling that Connelly's mental state at the time of his confession rendered his Miranda waiver invalid. This Court reversed, finding no constitutional basis for suppression in the absence of police coercion.

process are not violated absent state action. A lack of voluntariness not resulting from police conduct is no different for constitutional purposes than a lack of knowledge or intelligence not resulting from police conduct. Here, respondent cannot claim that the police somehow prevented him from understanding, or should have known he did not understand, the Miranda warnings.

Exclusion of a trustworthy statement, obtained in the absence of police misconduct and upon a good faith belief of the investigating officer that Miranda's waiver requirements were being fulfilled, comes at a high cost to society's interest in law enforcement, while adding nothing to protect the individual's interest in not being compelled to testify against himself. This Court has specifically recognized that a cost/benefit analysis must be employed in Miranda issues, see New York v. Quarles,

467 U.S. at 653-58, just as it is with fourth amendment violations. See United States v. Leon, 468 U.S. 897, 908-13 (1984) (as the fourth amendment exclusionary rule is designed to deter police misconduct, there is no benefit in suppressing evidence obtained in violation of a person's fourth amendment rights when no police misconduct has occurred); Massachusetts v. Sheppard, 468 U.S. 981 (1984) (same).

The case for a good faith test with Miranda claims is even more compelling than the fourth amendment context. In the fourth amendment claims, there has been an actual violation of a defendant's constitutional rights. Miranda claims, however, frequently result in suppression even where there has been no constitutional violation. See Oregon v. Elstad, 470 U.S. 298 (1985). To uphold the suppression of respondent's uncompelled confession would needlessly exclude probative evidence of guilt from

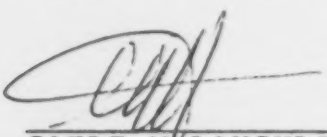
the truth seeking process in the absence of constitutionally offensive behavior. The purpose of the exclusionary rule is not to permit a defendant to litigate during a suppression hearing those issues which relate to insanity or the weight of the evidence. Defendant may raise all these issues at trial. Defendant's mental state alone should not prevent the prosecution from even bringing this rape case to trial. Suppression in this case simply serves no purpose whatsoever.

This Court must grant review.

CONCLUSION

For the foregoing reasons, the Commonwealth of Pennsylvania respectfully requests that a Writ of Certiorari issue to review the decision below.

Respectfully submitted,



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October 19, 1987

SUPREME COURT OF PENNSYLVANIA

Eastern District

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September 1, 1987

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Re: Commonwealth, Petitioner v.
Michael Cephas
No. 268 E.D. Allocatur
Docket 1987

Dear Ms. Barthold:

This is to advise you that the following order has been endorsed on the Petition for Allowance of Appeal filed in the above-captioned matter:

August 20, 1987
DENIED.
Per Curiam

Very truly yours,
/s/
Patrick Tassos
Deputy Prothonotary

PT:ejh
cc: John W. Packel, Esq.

J. 56037/86

COMMONWEALTH OF PENNSYLVANIA, Appellant	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
V.	:	
MICHAEL CEPHAS	:	NO. 02288 PHILADELPHIA 1984

J U D G M E N T

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of PHILADELPHIA County be, and the same is hereby AFFIRMED.

By The Court:

/s/ David A. Szewczak
PROTHONOTARY

Dated: March 4, 1987

J. 56037/86

COMMONWEALTH OF PENNSYLVANIA, Appellant	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
V.	:	
MICHAEL CEPHAS	:	NO. 02288 PHILADELPHIA 1984

Appeal from the Order of July 18, 1984, in the Court of Common Pleas of Philadelphia County, Criminal Division, at No. 83-11-221-226.

BEFORE: WICKERSHAM, OLSZEWSKI AND BECK, JJ.

OPINION BY BECK, J.: FILED MAR. 4 1987

The Commonwealth appeals an order granting a suppression motion. The court suppressed appellee's statements after finding that appellee did not knowingly waive his privilege against self-incrimination. We affirm.

Appellee was arrested on October 7, 1983 and charged with rape, indecent assault, indecent exposure, unlawful

restraint, terroristic threats, and simple assault. He moved to suppress two statements made to police during custodial interrogation. After a hearing, the motion was granted. The Commonwealth petitioned the court to reconsider. The court vacated its order pending reconsideration. The court denied the petition and reinstated its order granting the motion to suppress. This timely appeal followed.

Initially, we note that we have jurisdiction of this appeal from a pretrial suppression order because the Commonwealth certified in good faith that the order terminated or substantially handicapped its prosecution. Commonwealth v. Dugger, 506 Pa. 537, 486 A.2d 382 (1985).

Appellee was arrested on the basis of the victim's description. He was taken to the Sex Crimes Unit of the Philadelphia Police. At the time of his arrest, appellee was a street person living in an alley near his foster family's home. He had a long history of mental illness and hospitaliztion for this illness. He had consistently been diagnosed as a schizophrenic. His most recent hospitalization was about two weeks before his arrest after he was seen in a tree near an elementary school screaming at the school children and yelling for the principal to meet his demands.

Appellee was known to the police to be suffering from mental illness. When the arresting officers came to observe the alley where appellee lived, his foster

sister begged the officer to find help for appellee and to have him put away somewhere for his mental illness.

Upon his arrival at the Sex Crimes Unit, appellee was interviewed for background information. He was placed in handcuffs in a small detention room. He exhibited bizarre and psychotic behavior. The entire time he was in the detention room, he kicked the walls and the door, and he kept yelling inane comments, including that he was Ed Rendell's son and that he had dinner with Mr. Rendell the night before at Mr. Rendell's home. Mr. Rendell is the former District Attorney of Philadelphia and he is white. Appellee is black.

Appellee was initially interrogated in an office by a detective who knew that appellee suffered from mental illness. During this interrogation, appellee acted

childishly. He refused to sit unless given a cigarette or soda and cookies. The detective ceased the interrogation and returned appellee to the detention room where appellee continued his bizarre behavior.

Appellee was interrogated again and he continued to display his childlike behavior. He was read the warnings mandated by Miranda v. Arizona, 384 U.S. 436 (1966), and he made incriminating statements. The court found that the interrogating detective knew that a statement was essential to the prosecution of the case. The victim had been unable to make a positive photo identification of appellee after his arrest. The court found that the detective skillfully manipulated appellee through a process of reward and punishment to make the statements.

At the hearing on the motion to suppress, the Commonwealth presented an expert who

testified that appellee was capable of understanding his Miranda warnings and that he was capable of knowingly waiving his Fifth Amendment privilege against self-incrimination. Appellee presented two experts who testified to the contrary.

The court found after reviewing this testimony that appellee was incapable of understanding the significance of the Miranda warnings and of making a competent waiver of his right to remain silent or of his right to have counsel present. The court accordingly concluded that the Commonwealth did not meet its burden to show a knowing waiver of the Constitutional right.

The Commonwealth contends that appellee voluntarily chose to speak after receiving Miranda warnings. The court, on the other hand, found that appellee did not voluntarily waive Miranda; it viewed his

confession as the product of a deliberate effort on the part of the police detective to exploit appellee's mental weakness. We need not resolve this dispute. Regardless of whether a waiver of Miranda is voluntary, the Commonwealth must prove by a preponderance of the evidence that the waiver is also knowing and intelligent.

> Miranda holds that "[t]he defendant may waive effectuation" of the rights conveyed in the warnings "provided the waiver is made voluntarily, knowingly and intelligently." The inquiry has two distinct dimensions. First the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that Miranda rights have been waived.

Moran v. Burbine, 89 L Ed 2d 410, 421 (1986) (citations omitted). See also Edwards v. Arizona 451 U.S. 477, 484 (1981): Tague v. Louisiana, 444 U.S. 469 (1980); Commonwealth v. Scarborough, 491 Pa. 300, ___, 421 A.2d 147, 153 (1980); Commonwealth v. Cannon, 453 Pa. 389, 309 A.2d 384 (1973). Moreover, in reviewing an order granting a suppression motion, we are bound by the suppression court's findings of fact if the findings are supported by competent evidence. Commonwealth v. Hackney, ___Pa. Super. _____, 510 A.2d 800 (1986).

With these principles in mind, we affirm the suppression court. The court found that appellee suffered from chronic undifferentiated schizophrenia and that this mental illness prevented him from understanding the Miranda warnings. The

court also found that appellee was incapable of making a knowing and intelligent waiver of his privilege against self-incrimination. These findings are supported in the record by the testimony of Dr. Berman, appellee's expert. Dr. Berman based his opinion on a diagnosis of appellee after a personal interview and on appellee's previous mental health history. Dr. Berman's qualification as an expert was not challenged. Therefore, there is competent evidence to support the court's findings. Accordingly, the court correctly concluded that the Commonwealth failed to prove that appellee knowingly and intelligently waived his privilege against self-incrimination. We acknowledge that a Dr. Schwartzmann testified for the Commonwealth and disputed Dr. Berman's findings. However, this testimony only created a credibility issue. It is exclusively the province of the suppression

court to determine the credibility of the witnesses and the weight to be accorded their testimony. Commonwealth v. Neely, 298 Pa.Super. 328, ____, 444 A.2d 1199, 1205 (1982), overruled on other grounds, Commonwealth v. Holmes, 315 Pa. Super. 256, 461 A.2d 1268 (1983).

Finally, the Commonwealth contends that this case is controlled by Colorado v. Connelly, 93 L. Ed. 2d 473 (1986). In Connelly, a mentally ill defendant waived his Miranda rights because he believed that he was compelled to do so by the "voice of God." Id. at 480. The United States Supreme Court held that under the federal constitution this waiver would not be found to be involuntary in the absence of misconduct on the part of government officials. The Court, however, did not purport to decide whether Connelly's waiver

was knowing and intelligent. See Id. at 487 n. 4 (majority opinion) and at 488 n.5 (Brennan, J., dissenting). This remains a distinct and independent requirement for the admission of a confession into evidence. See Colorado v. Spring, 55 U.S.L.W. 4162, 4165 (U.S. Jan. 27, 1987).

In summary, federal law requires that a suppression court undertake a two step inquiry into the validity of a Miranda waiver. The court must first determine whether the waiver was voluntary in the sense of being the result of an intentional choice on the part of a defendant who had not been subject to undue governmental pressure. The court must then focus on cognitive factors to determine if the waiver was knowing and intelligent - i.e. whether the defendant was aware of the nature of the choice that he made by giving up his Miranda rights.

In the case sub judice, the trial court found on the basis of credible evidence that appellee's confession was not made knowingly because he was incapable of comprehending the meaning of the Miranda warnings at the time he was interrogated. Accordingly, we affirm the suppression order. Cf. State v. Daily No. 16997, slip op (W. Va. Dec. 16, 1986) (senile defendant with low intelligence and hearing loss did not knowingly waive Miranda).

Order affirmed.

Olszewski, J. files a Concurring Opinion.

J. 56037/86

COMMONWEALTH OF PENNSYLVANIA, Appellant	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
V.	:	
MICHAEL CEPHAS	:	NO. 02288 PHILADELPHIA 1984

Appeal from the Order of July 18, 1984, in the Court of Common Pleas of Philadelphia County, Criminal Division, at No. 83-11-221-226.

BEFORE: WICKERSHAM, OLSZEWSKI AND BECK, JJ.

CONCURRING OPINION BY OLSZEWSKI, J.:

FILED: MAR. 4, 1987

Though agreeing with the majority's disposition of this particular case, I write separately to emphasize that this decision is limited to the facts of this case. The majority's holding does not establish a per se rule that an accused is incapable of waiving his constitutional rights whenever he asserts that he is suffering from a mental illness. Both this Court and our Supreme Court have

recognized that the mental or physical deficiencies of an accused are not conclusive evidence of an accused's inability to waive his constitutional rights. See Commonwealth v. Glover, 488 Pa. 459, 412 A.2d 855 (1980) (there is no per se rule of inability to waive constitutional rights based on mental deficiencies); Commonwealth v. Neely, 298 Pa.Super. 328, 444 A.2d 1199 (1982) (a defendant may be suffering from a mental illness and still be capable of waiving his constitutional rights).

Trial judges, consequently, should be more wary of concluding that an accused is incapable of waiving his constitutional rights merely because he suffers from a mental illness. The trial judge must

thoroughly examine all the circumstances surrounding the particular case to determine if the accused made a knowing and intelligent waiver. See Glover, supra.

J. 56037/86

COMMONWEALTH OF PENNSYLVANIA, Appellant	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
V.	:	
MICHAEL CEPHAS	:	NO. 02288 PHILADELPHIA 1984

J U D G M E N T

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of PHILADELPHIA County be, and the same is hereby AFFIRMED.

BY THE COURT:
/s/David A. Szewczak
Prothonotary

Dated: DECEMBER 15, 1986

J. 56037/86

COMMONWEALTH OF PENNSYLVANIA, Appellant	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
V.	:	
MICHAEL CEPHAS	:	NO. 02288 PHILADELPHIA 1984

Appeal from the Order of July 18, 1984, in the Court of Common Pleas of Philadelphia County, Criminal Division, at No. 83-11-221-226.

BEFORE: WICKERSHAM, OLSZEWSKI AND BECK, JJ.

OPINION BY BECK, J.: FILED DEC. 15, 1986

The Commonwealth appeals an order granting a suppression motion. The court suppressed appellee's statements after finding that appellee did not knowingly waive his privilege against self-incrimination. We affirm.

Appellee was arrested on October 7, 1983 and charged with rape, indecent assault, indecent exposure, unlawful

restraint, terroristic threats, and simple assault. He moved to suppress two statements made to police during custodial interrogation. After a hearing, the motion was granted. The Commonwealth petitioned the court to reconsider. The court vacated its order pending reconsideration. The court denied the petition and reinstated its order granting the motion to suppress. This timely appeal followed.

Initially, we note that we have jurisdiction of this appeal from a pretrial suppression order because the Commonwealth certified in good faith that the order terminated or substantially handicapped its prosecution. Commonwealth v. Dugger, 506 Pa. 537, 486 A.2d 382 (1985).

Appellee was arrested on the basis of the victim's description. He was taken to

the Sex Crimes Unit of the Philadelphia Police. At the time of his arrest, appellee was a street person living in an alley near his foster family's home. He had a long history of mental illness and hospitaliztion for this illness. He had consistently been diagnosed as a schizophrenic. His most recent hospitalization was about two weeks before his arrest after he was seen in a tree near an elementary school screaming at the school children and yelling for the principal to meet his demands.

Appellee was known to the police to be suffering from mental illness. When the arresting officers came to observe the alley where appellee lived, his foster sister begged the officer to find help for appellee and to have him put away somewhere for his mental illness.

Upon his arrival at the Sex Crimes Unit, appellee was interviewed for background information. He was placed in handcuffs in a small detention room. He exhibited bizarre and psychotic behavior. The entire time he was in the detention room, he kicked the walls and the door, and he kept yelling inane comments, including that he was Ed Rendell's son and that he had dinner with Mr. Rendell the night before at Mr. Rendell's home. Mr. Rendell is the former District Attorney and he is white. Appellee is black. A photograph taken of appellee while in custody reflects his reaction to his arrest.

Appellee was initially interrogated in an office by a detective who knew that

appellee suffered from mental illness. During this interrogation, appellee acted childishly and manipulatively. He refused to sit unless given a cigarette or soda and cookies. The detective ceased the interrogation and returned appellee to the detention room where appellee continued his bizarre behavior.

Appellee was interrogated again and he continued to display his childlike behavior. He was read his Miranda warnings and made incriminating statements. The court found that the interrogating detective knew that a statement was essential to the prosecution of the case. The victim had been unable to make a positive photo identification of appellee after his arrest. The court found that the detective skillfully manipulated appellee through a process of reward and punishment to make the statements.

At the hearing on the motion to suppress, the Commonwealth presented an expert who testified that appellee was capable of understanding his Miranda warnings and that he was capable of knowingly waiving his Fifth Amendment privilege against self-incrimination. Appellee presented two experts who testified to the contrary.

The court found after reviewing this testimony that appellee was incapable of understanding the significance of the Miranda warnings and of making a competent waiver of his right to remain silent or of his right to have counsel present. The court accordingly concluded that the Commonwealth did not meet its burden to show a knowing waiver of the Constitutional right.

The Commonwealth contends that it complied with the mandates of Miranda v.

Arizona, 384 U.S. 436 (1966) and that the statements obtained from appellee should be admissable at trial. Although the Commonwealth fervently argues that the Miranda rules were observed, the court found otherwise and concluded that appellee's statements were involuntary. We need not, however, review this finding. Aside from compliance with Miranda, the Commonwealth must also prove by a preponderance of the evidence that the accused knowingly and intelligently waived his Fifth Amendment privilege for statements that are the product of custodial interrogation to be admissable. Tague v. Louisiana, 444 U.S. 469 (1980); Johnson v. Zerbst, 304 U.S. 458 (1938); Commonwealth ex rel. Butler v. Rundle, 429 Pa. 141, 239 A.2d 426 (1968). Moreover, the Common-

wealth must show that the accused was competent to make a knowing and intelligent waiver when the accused claims a lack of competence. See Commonwealth v. Cannon, 453 Pa. 389, 309 A.2d 384 (1973); LaFave & Israel, CRIMINAL PROCEDURE § 6.9(b), at 307 (1985). Also, in reviewing an order granting a suppression motion, we are bound by the suppression court's findings of fact if the findings are supported by competent evidence. Commonwealth v. Hackney, _____ Pa. Super. _____, 510 A.2d 800 (1986).

With these principles in mind, we affirm the suppression court. The court found that appellee suffered from chronic undifferentiated schizophrenia and that this mental illness prevent appellee from understanding the Miranda-warnings. The court also found that appellee was incapable of making a knowing and

intelligent waiver of his privilege against self-incrimination. These findings are supported in the record by the testimony of Dr. Berman, appellee's expert. Dr. Berman based his opinion on a diagnosis of appellee after a personal interview and on appellee's previous mental health history. Dr. Berman's qualification as an expert was not challenged. As such, there is competent evidence to support the court's findings. Accordingly, the court correctly concluded that the Commonwealth failed to prove that appellee knowingly and intelligently waived his privilege against self-incrimination. We acknowledge that Dr. Schwartzmann testified for the Commonwealth and disputed Dr. Berman's findings. However, this

testimony only created a credibility issue. It is exclusively the province of the suppression court to determine the credibility of the witnesses and the weight to be accorded their testimony. Commonwealth v. Neely, 298 Pa.Super. 328, ____, 444 A.2d 1199, 1205 (1982), overruled on other grounds, Commonwealth v. Holmes, 315 Pa. Super. 256, 461 A.2d 1268 (1983).

The Commonwealth strenuously argues that the statements should be admitted because it complied with the Miranda requirements. Whether or not the Commonwealth complied with Miranda is not relevant. If the Commonwealth sustained its burden to prove compliance with Miranda, it had to also prove that a waiver was made knowingly and intelligently.

Under these facts, part of this burden was to prove that appellee was competent to make a knowing and intelligent waiver. The burden to show competence was not met. Therefore, the burden to show a knowing and intelligent waiver was not met, and the statements were correctly suppressed.

Order affirmed.

Olszewski, J., files Concurring Opinion.

J. 56037/86

COMMONWEALTH OF PENNSYLVANIA, Appellant	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
V.	:	
MICHAEL CEPHAS	:	NO. 02288 PHILADELPHIA 1984

Appeal from the Order of July 18, 1984, in the Court of Common Pleas of Philadelphia County, Criminal Division, at No. 83-11-221-226.

BEFORE: WICKERSHAM, OLSZEWSKI AND BECK, JJ.

CONCURRING OPINION BY OLSZEWSKI, J.:

FILED: DEC. 15, 1986

Though agreeing with the majority's disposition of this particular case, I write separately to emphasize that this decision is limited to the facts of this case. The majority's holding does not establish a per se rule that an accused is incapable of waiving his constitutional

rights whenever he asserts that he is suffering from a mental illness. Both this Court and our Supreme Court have recognied that the mental or physical deficiencies of an accused are not conclusive evidence of an accused's inability to waive his constitutional rights. See Commonwealth v. Glover, 488 Pa. 459, 412 A.2d 855 (1980) (there is no per se rule of inability to waive constitutional rights based on mental deficiencies); Commonwealth v. Neely, 298 Pa. Super. 328, 444 A.2d 1199 (1982) (a defendant may be suffering from a mental illness and still be capable of waiving his constitutional rights).

Trial judges, consequently, should be more wary of concluding that an accused is incapable of waiving his constitutional

rights merely because he suffers from a mental illness. The trial judge must thoroughly examine all the circumstances surrounding the particular case to determine if the accused made a knowing and intelligent waiver. See Glover, supra.

At this time I will give you my Findings of Fact. There will be no Findings of Fact on the issue of probable cause to arrest the defendant as that issue is not seriously challenged by the defendant at no time. Someone can always re-file.

The Findings of Fact will all relate to the defendant's capabilities of knowingly and voluntarily waiving his constitutional rights.

The Findings of Fact are as follows:

One, Michael Cephas, 23-year-old defendant was arrested on October 7th, 1983, was on the streets of the City and County of Philadelphia.

Two, following his arrest he was taken to the Sex Crimes Unit, Frankford and Castor Avenues and placed in a small detention room in handcuffs in anticipation of questioning about a

reported rape at the chapel at the University of Pennsylvania Hospital on 7/29/83. He, at the time of his arrest and detention, Michael had an extensive history of profound mental illness. He had consistently been diagnosed as a schizophrenic of the most serious type.

Michael spent from October the 7th, 1982 to November the 5th, 1982 at Philadelphia Psychiatric Center. Again in August of 1983 he was taken to Saint Mary's Hospital by the Philadelphia police where he was found naked on a scaffold sixty feet up in the area of City Hall.

On September 21st 1983, he was again taken by the police to Saint Mary's because he was up in a tree and by an elementary school screaming at the school children and yelling for the principal to meet his demands. According to the

records of Saint Mary's Hospital that was his fourth hospital admission for psychiatric psychotic episodes in that institution alone.

The Court notes the proximity in time of his arrest of October the 7th.

Four, at the time of his arrest Michael was a street person. He lived in an alley not far from the home of his foster family. In this alley he kept a series of costumes neatly arranged in bags and stacks. He has been known by police to dress as Moses, a preacher, a lumberjack who could climb buildings and trees and punk rocker.

Five, when the arresting officers came to observe the alley where Michael lived his foster sister begged the officer to find help for Michael and to have him put away somewhere for his mental illness.

Six, Michael's behavior when he was at the interrogation by the police at the police headquarters and during his confinement in the detention room was bizarre and psychotic. The entire time he was put in a small detention room, handcuffed, he kicked the door, walls and kept yelling inane comments, including that he was Ed Rendell's son, that he had dinner with his father the night before at Mr. Rendell's home. Mr. Rendell who is the D.A. for the City and County of Philadelphia.

Seven, the photograph taken of Michael when he was taken into custody reflects his reaction to this predicament.

Eight, during the first interrogation Michael acted very childishly and manipulatively. He refused to sit down

unless he was given a cigarette. He wanted the police to give him a soda and cookies. He was unable to take the questioning seriously. And the interrogating officer finally abandoned the interview believing him to be pompous.

Nine, during the absence of the assigned detective Michael continued his earlier impulsive childhood behavior again in the detention room.

Ten, the assigned detective during her absence was unable to obtain an identification of Michael by his alleged victim despite the fact that the victim had been face-to-face with her assailant for forty-five minutes and had earlier provided data to a police artist which resulted in a

positive sketch which led to Michael's arrest and detention.

Eleven, the assigned detective knew that upon her return to the Sex Crimes Unit that unless Michael confessed to the crime she would have to release him.

Twelve, Michael stopped hollering and banging, but when he was released from the Detention Center he did, however, continue child-like behavior. He did, for example, remain standing despite instructions to sit and he continued his defiance until he was prodded by a cigarette. He was moreover given cookies and soda to reinduce him to adopt a more cooperative attitude.

Thirteen, prior to his being given cigarettes, cookies and soda, Michael was read the Miranda Warnings to which he

gave verbal responses ostensively suggesting he wished to surrender his right to remain silent and/or to counsel.

Fourteen, Michael's psychosis includes a split personality. The other person inhabiting Michael's body is named Johnny Johnson.

Fifteen, prior and during Michael's interview the assigned detective knew that Michael was suffering from a profound major mental illness.

Sixteen, the assigned detective skillfully manipulated Michael's mind through a process of reward and punishment.

Seventeen, Michael was held for a series of suggestive and leading questions which resulted in his making an incriminating statement.

Eighteen, despite continued cajoling by the assigned detective, Michael refused to sign the statement because he was no longer receiving any reward or punishment.

Nineteen, the expert testimony was in agreement on one point, and that was that Michael is suffering with serious schiizophrenia. His behavior during the interrogation is consistent with this diagnosis.

All experts agree that medication can help control such symptoms but there is no substantial evidence this Court found credible that any drugs had been administered to this defendant and his behavior at the time of the interviews suggest just the opposite.

Twenty, Michael's conduct during the interrogation shows conclusively that he did not appreciate legal jeopardy of this

position. His childish and manipulative behavior and long history of mental illness is convincing he is not in touch with reality of the situation and he could not understand the significance of his so-called Miranda Warnings or competently waive his rights to remain silent or to have counsel present.

Conclusions to be drawn from the following Findings of Fact is that the defendant, Michael Cephas, was not capable of knowingly and voluntarily waiving his constitutional rights when he made the statement to the police after receiving his so-called Miranda Warnings.

The Commonwealth had the burden to prove by the preponderance of the evidence the defendant's statement was a knowing and voluntary waiver of his right not to incriminate himself. The Commonwealth

did not meet that burden in the Court's view.

It is, of course, my responsibility to determine credibility and weight of the witnesses before their testimony. The Court is mindful of a line of cases which suggest in these cases that mentally ill people can voluntarily surrender their right. Notwithstanding that case, the Court is satisfied with this decision in this particular case Michael was incapable at the time that he was interviewed to waive his rights.

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

NO. 87-648

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

COMMONWEALTH OF PENNSYLVANIA,
Petitioner

v.

MICHAEL CEPHAS,
Respondent

PETITION FOR WRIT OF CERTIORARI TO
THE SUPERIOR COURT OF PENNSYLVANIA

RESPONDENT'S BRIEF IN OPPOSITION

JOHN W. PACKEL, Assistant Defender
Chief, Appeals Division
(Counsel of Record)
JULES EPSTEIN, Assistant Defender
BENJAMIN LERNER, Defender

Defender Association of Philadelphia
121 N. Broad Street
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November, 1987

QUESTION PRESENTED

1. Should not certiorari be denied where a state court suppressed statements made during custodial interrogation after finding, with ample support in the record, that respondent suffered from a severe mental illness which left him incompetent to waive his constitutional right against self-incrimination, as this Court has always required that such a waiver be made knowingly and intelligently?

TABLE OF CONTENTS

	PAGE
Question Presented	i
Table Of Contents	ii
Table Of Authorities	iii
Statement Of The Case	2-6
Reason For Denying The Writ	7-12
Conclusion	12

Appendix A:
Judgment And Opinion Of The Superior Court Dated March 4, 1987

Appendix B:
Opinion Of The Superior Court Dated December 15, 1986

Appendix C:
Findings Of Fact And Conclusions Of Law

TABLE OF AUTHORITIES

PAGE

Federal Cases

COLORADO V. CONNELLY 10-11
___ U.S. ___, 107 S.Ct. 851 (1987)

COLORADO V. SPRING 10
___ U.S. ___, 107 S.Ct. 515 (1987)

EDWARDS V. ARIZONA 10
451 U.S. 477 (1981)

FARE V. MICHAEL C. 8,12
442 U.S. 707 (1979)

JOHNSON V. ZERBST 7
304 U.S. 458 (1938)

MICHAEL V. TUCKER 10
417 U.S. 433 (1974)

MIRANDA V. ARIZONA 7
384 U.S. 436 (1966)

NORTH CAROLINA V. BUTLER 8
441 U.S. 369 (1979)

OREGON V. BRADSHAW 8
462 U.S. 1039 (1983)

SCHNECKLOTH V. BUSTAMONTE 10
412 U.S. 218 (1973)

TAGUE V. LOUISANA 8
444 U.S. 469 (1980)

State Cases

COMMONWEALTH V. BROWN 6,8
341 Pa. Super. 138, 491 A.2d 189 (1985)

COMMONWEALTH V. HACKNEY 6
353 Pa. Super. 552, 510 A.2d 800 (1986)

STATEMENT OF THE CASE

Respondent was arrested on October 7, 1983, and charged with a rape said to have occurred on September 29, 1983. On April 19, 1984, after taking testimony over two days of hearings, the Honorable Bernard Avellino, of the Philadelphia County Court of Common Pleas, entered an order suppressing statements made by respondent to police during custodial interrogation. Findings of Fact and Conclusions of Law (attached as Appendix "C") were announced in open court on July 25, 1984.

The lower court found that respondent had "an extensive history of profound mental illness" and "had been consistently diagnosed as a schizophrenic of the most serious type" (Finding One, Appendix "C"); that respondent was manipulated by his police interrogator, who was aware of respondent's mental illness (Findings Fifteen through Eighteen, Appendix "C");[1] and, most

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[1] In its Statement Of The Case, petitioner ignores this and almost all of the express findings of the suppression court. Petitioner's Statement Of The Case provides, as if fact, selected excerpts of the testimony most favorable to its case; it in no way reflects the Findings of the lower court.

This is most evident in Petitioner's depiction of the police conduct in the instant case. Its argument that "Here, the undisputed and credited evidence established that the police scrupulously followed the law" (Petition For Writ Of Certiorari, 12) flies in the face of the articulated findings, including the following:

> Fifteen, prior and during Michael's interview the assigned detective knew that Michael was suffering from a profound major mental illness.

(continued...)

importantly, that respondent was suffering from his mental illness at the time of his interrogation and as a result was incapable of understanding or waiving his constitutional right against self-incrimination (Finding Twenty, Appendix "C").

Testimony[2] supportive of the hearing court's findings included the following:

> 1. Respondent was diagnosed, after a court-ordered psychiatric examination in 1982, as suffering from "either bipolar affective illness, or schizophrenia as schizo-affective type" (N.T. 138).[3] Respondent was hospitalized later that year with a diagnosis of schizophrenia (N.T. 137).
>
> 2. Medical records established that on August 22, 1983, less than two months before

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[1](...continued)

> Sixteen, the assigned detective skillfully manipulated Michael's mind through a process of reward and punishment.
>
> Seventeen, Michael was held for a series of suggestive and leading questions which resulted in his making an incriminating statement.
>
> Eighteen, despite continued cajoling by the assigned detective, Michael refused to sign the statement because he was no longer receiving any reward or punishment.

Appendix "C", Findings Fifteen through Eighteen.

[2] Contrary to the assertion of Petitioner, respondent did not "rel[y] exclusively on psychiatric evidence to support a claim of incompetency" (Petition for Writ of Certiorari, 8). Respondent and the lower court relied as well on the testimony of the prosecution witnesses, respondent's bizarre conduct from the time of his arrest through his interrogation, and respondent's arrest photograph.

[3] "N.T." designates the notes of testimony from the two evidentiary hearings on respondent's motion to suppress, which are consecutively paginated.

his arrest on this case, respondent had suffered an acute psychotic episode and was hospitalized "because he was found on a sixty-foot scaffold, disrobing himself, breaking windows and threatening to jump" (N.T. 208).

3. Medical records established that on September 21, 1983, less than three weeks before his arrest on this case, respondent was hospitalized after an acute psychotic episode in which he was found in a tree across the street from a schoolyard (N.T. 202-207).

4. Dr. Perry Berman, a psychiatrist, examined respondent repeatedly after his arrest in this case. He diagnosed respondent as schizophrenic (N.T. 130-133).

5. Dr. Richard Schwartzman, a psychiatrist at the Philadelphia Detention Center, examined respondent four days after his arrest in the instant case and diagnosed him as suffering from schizophrenia, undifferentiated type (N.T. 196-198).

6. At the time of his arrest on October 7, 1983, respondent was living in an alleyway near his parents' house. In the alley he kept bags of clothing, religious articles and costumes. Respondent often dressed in costumes, sometimes appearing as the prophet Moses (N.T. 18-20).

7. The arresting officer was begged by respondent's family to "Please get him put away somewhere" so he would get help for his mental problems. The arresting officer communicated this information to Officer Keenan, respondent's interrogator (N.T. 29-30).

8. Respondent was questioned twice by Officer Keenan. Between sessions, while in a locked detention room, he was hollering and kicking the door (N.T. 58).

9. Respondent, a black male, told police that he was the son of Ed Rendell [a white male, at the time District Attorney of Philadelphia] and had dined at the Rendell

home the night before his arrest (N.T. 58-59).

10. Richard Boroch, a licensed psychologist and Director of Social and Psychiatric Services at the Defender Association of Philadelphia, examined respondent on October 13, 1983. Respondent was deemed not to be competent to proceed to trial at that time; his affect was excited and included inappropriate laughter (N.T. 90-96).

11. When Mr. Boroch asked respondent whether he has had any hallucinations or visions, respondent stated that the answers are in the Bible (N.T. 96-97).

12. Mr. Boroch then arranged for respondent's immediate transfer to the prison hospital for treatment (N.T. 99).

13. Dr. Berman concluded, based upon his examinations of respondent, respondent's medical records, the police reports and the preliminary hearing testimony of Officer Keenan, that on October 7, 1983, respondent was suffering from the major mental illness schizophrenia and was incapable of understanding and intelligently waiving his constitutional rights (N.T. 139-141).

14. Dr. Berman explained that schizophrenia is a major disease of psychotic proportions which disturbs its victim's behavior and interferes with the ability to think in an organized way; that persons afflicted with schizophrenia may behave as one personality and then suddenly switch and behave like another personality; and that the schizophrenic mental state allows the individual to be highly suggestible and to follow others' requests and repeat back things others may have suggested, but without understanding how seriously others are taking his statements (N.T. 133, 141-142).

Petitioner sought reconsideration of the lower court's ruling, and the order suppressing respondent's statement was vacated. After additional argument, the order granting

suppression was reinstated on July 25, 1984. Petitioner then appealed this decision to the Superior Court of Pennsylvania.

The Superior Court twice (Appendices "A" and "B") unanimously affirmed Judge Avellino's order, validating the lower court's findings of fact as being supported by the record[4] and holding that the statement had to be suppressed as respondent was "incapable of comprehending the meaning of the Miranda warnings at the time he was interrogated" (Appendix "A", p. 8).

Petitioner then sought review in the Pennsylvania Supreme Court. That Court denied review in an Order dated August 20, 1987. The instant Petition for a Writ of Certiorari followed.

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[4] The findings of fact of a court ordering suppression, if supported by any evidence in the record, are deemed valid and final as a matter of state law. Commonwealth v. Hackney, 353 Pa. Super. 552, 510 A.2d 800 (1986); Commonwealth v. Brown, 341 Pa. Super. 138, 491 A.2d 189 (1985).

REASONS FOR DENYING THE WRIT

Respondent's statements, made to police during custodial interrogation in a police station, were suppressed because his major mental illness left him incapable of understanding and knowingly and intelligently waiving his right against self-incrimination. The Petition for Writ of Certiorari must be denied because petitioner's claim that a statement need not be suppressed where a suspect is incompetent and incapable of waiving his right against self-incrimination as long as the police engage in no coercive conduct is clearly meritless. Petitioner's painfully misguided view of the law is without any persuasive rationale and is contrary to every case decided by this Court in the past twenty-one years applying Miranda v. Arizona, 384 U.S. 436 (1966).

In Miranda, the Court required that an accused, subject to the coercive circumstances of custodial interrogation, be advised of his constitutional right against self-incrimination and that, absent the waiver of that right, "no evidence obtained as a result of interrogation can be used against him" 384 U.S. at 479 (footnote omitted). Such a waiver was required to be knowing and intelligent, the same as for any constitutional right.

> This Court has always set high standards of proof for the waiver of constitutional rights. Johnson v. Zerbst, 304 U.S. 458 (1938), and we reassert these standards as applied to in-custody interrogation. 384 U.S. at 475.

Thus, contrary to petitioner's assertions (Petition for Writ of Certiorari, 15-16) that a Johnson v. Zerbst analysis has no place in determining the validity of a Miranda waiver,* that standard was mandated by Miranda itself and has been continually reaffirmed and applied by this Court. Tague v. Louisiana, 444 U.S. 469, 470 (1980); North Carolina v. Butler, 441 U.S. 369, 374-5 (1979); cf., Oregon v. Bradshaw, 462 U.S. 1039, 1046 (1983); Fare v. Michael C., 442 U.S. 707, 725 (1979), reh. den. 444 U.S. 887.

The validity of a purported waiver is to be determined by "the particular facts and circumstances surrounding that case, including the background, experience and conduct of the accused." Johnson v. Zerbst, 304 U.S. at 464; North Carolina v. Butler, 441 U.S. at 374-5. This includes evaluation of the suspect's

> age, experience, education, background and intelligence, and whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.

Fare v. Michael C., 442 U.S. at 725 (emphasis added). It is precisely this inquiry that was conducted in respondent's case;

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* This issue was never presented to the suppression court, the Pennsylvania Superior Court, or in its Petition for Allowance of Appeal to the Supreme Court of Pennsylvania. Accordingly, it is not properly preserved for review by this Court. Youakim v. Miller, 425 U.S. 231, 233-234 (1976); Lawn v. United States, 355 U.S. 339, 362-363, fn. 16 (1958); California v. Taylor, 353 U.S. 553, 557 fn. 2 (1957).

and precisely because he lacked the "capacity to understand" the warnings that his confession was suppressed.[6]

Petitioner is clearly wrong in branding "specious" (Petition for Writ of Certiorari, 18-19) the distinction between "voluntariness" and "knowing and intelligent." This precise distinction has been clearly drawn and utilized by this Court. Miranda set prerequisites under which "a defendant's statements might be excluded at trial despite their voluntary character

---

[6] The suppression court found that respondent

> is not in touch with reality of the situation and he could not understand the significance of his so-called Miranda Warnings or competently waive his rights to remain silent or to have counsel present.

Appendix "C," Finding Twenty. At the hearing on the prosecution's request for reconsideration of the suppression order, the hearing judge succinctly explained the basis for his decision:

> THE COURT: Suppose Mr. Cephas was asleep, asleep or unconscious, at which time the officer, Officer Keenan, read him the Miranda Warnings while he was unconscious. He later woke up and was questioned and gave a statement. Would your argument be then that the statement should be admissible?
>
> THE PROSECUTOR: That is not what you have here.
>
> THE COURT: He was unconscious in my view. The same as if he had been drugged or was asleep. I don't think he understood the warnings.
>
> I don't think he is capable of understanding the warnings. I don't think he did understand them. I don't think he voluntarily gave up his right to remain silent.

(Hearing on Commonwealth Request for Reconsideration, July 18, 1984, p. 7).

under traditional principles." Michigan v. Tucker, 417 U.S. 433, 443 (1974).

> It is reasonably clear under our cases that waivers of counsel must not only be voluntary, but must also constitute a knowing and intelligent relinquishment of a known right or privilege...

Edwards v. Arizona, 451 U.S. 477, 482 (1981) (emphasis added); cf., Schneckloth v. Bustamonte, 412 U.S. 218, 238-241 (1973). The necessity for this two-fold inquiry was most recently reaffirmed by this Court this past term.

> A statement is not "compelled" within the meaning of the Fifth Amendment if an individual "voluntarily, knowingly and intelligently" waives his constitutional privilege. Miranda v. Arizona, supra, at 444. The inquiry whether a waiver is coerced "has two distinct dimensions." Moran v. Burbine, 475 U.S. ___, ___ (1986):
>
> > First the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the 'totality of the circumstances surrounding the interrogation' reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived." Ibid. (quoting Fare v. Michael C., 442 U.S. 707, 725 (1979).

Colorado v. Spring, ___ U.S. ___, ___, 107 S.Ct. 851, 857 (1987) (emphasis added).

For the same reason petitioner can find no support for its unprecedented claim in Colorado v. Connelly, ___ U.S. ___, 107

S.Ct. 515 (1987). There, this Court held that the confession of a person who understood the Miranda warnings, 107 S.Ct. at 519, would not be suppressed as involuntary where his mental condition compelled him to confess, as there was no coercive conduct by the police. The issue of whether the waiver was "knowing and intelligent" was not before this Court; police misconduct or coercion was held to be a necessary predicate only to a finding that the confession was involuntary. 107 S.Ct. at 524, fn 4; 107 S.Ct. at 533 (Brennan, J., dissenting).

To accept petitioner's arguments would be to validate the admission of statements, made after arrest and during police station interrogation, of a person incapable of understanding English, of a person with an intelligence quotient of a three year old, or of a person delirious due to illness, alcohol or drugs, as long as there was no provable police misconduct. This is not the law of this country, and it clearly should not be.

Miranda held the requirements of warnings and waiver to be

> fundamental...and not simply a preliminary ritual to existing methods of interrogation.
>
> The warnings required and the waiver necessary in accordance with our opinion today are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by a defendant.

384 U.S. at 477. Petitioner failed to prove a valid waiver even by a preponderance of the evidence.

Respondent was mentally incompetent and without "the capacity to understand the warnings given him, the nature of his

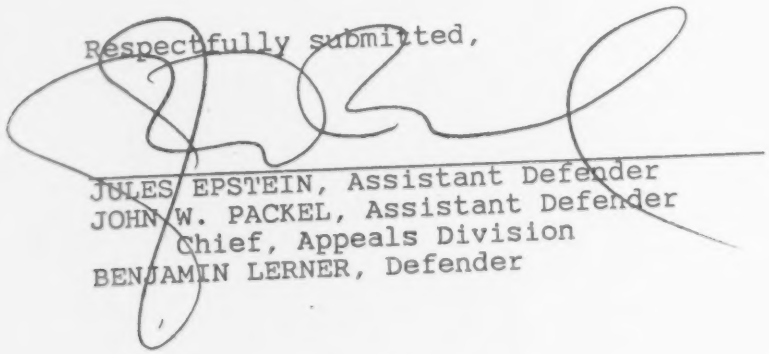
Fifth Amendment rights, and the consequences of waiving those rights." Fare v. Michael C., 442 U.S. at 725. The Findings of Fact entered by the suppression court were amply supported by the record and the order suppressing respondent's statements was in accordance with every decision of this Court interpreting and applying Miranda.

Review by this Court is therefore unwarranted.

CONCLUSION

For the foregoing reasons, respondent Michael Cephas, by his counsel, respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,



JULES EPSTEIN, Assistant Defender
JOHN W. PACKEL, Assistant Defender
Chief, Appeals Division
BENJAMIN LERNER, Defender

P.D.

J. 56037/86 - 1

COMMONWEALTH OF PENNSYLVANIA, APPELLANT	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
V.	:	
MICHAEL CEPHAS	:	NO. 02288 PHILADELPHIA 1984

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of PHILADELPHIA County be, and the same is hereby AFFIRMED.

BY THE COURT:

David A. Szumski

PROTHONOTARY

Dated: MARCH 4, 1987

EXHIBIT "A"

COMMONWEALTH OF PENNSYLVANIA, APPELLANT : IN THE SUPERIOR COURT OF PENNSYLVANIA

V. :

MICHAEL CEPHAS : NO. 02288 PHILADELPHIA 1984

Appeal from the Order of July 18, 1984, in the Court of Common Pleas of Philadelphia County, Criminal Division, at No. 83-11-221-226.

BEFORE: WICKERSHAM, OLSZEWSKI AND BECK, JJ.

OPINION BY BECK, J.: FILED MAR -4 1987

The Commonwealth appeals an order granting a suppression motion. The court suppressed appellee's statements after finding that appellee did not knowingly waive his privilege against self-incrimination. We affirm.

Appellee was arrested on October 7, 1983 and charged with rape, indecent assault, indecent exposure, unlawful restraint, terroristic threats, and simple assault. He moved to suppress two statements made to police during custodial interrogation. After a hearing, the motion was granted. The Commonwealth petitioned the court to reconsider. The court vacated its order pending reconsideration. The court denied the petition and reinstated its order granting the motion to suppress. This timely appeal followed.

Initially, we note that we have jurisdiction of this appeal from a pre-trial suppression order because the Commonwealth certified in good faith that the order terminated or substantially

handicapped its prosecution. Commonwealth v. Dugger, 506 Pa. 537, 486 A.2d 382 (1985).

Appellee was arrested on the basis of the victim's description. He was taken to the Sex Crimes Unit of the Philadelphia Police. At the time of his arrest, appellee was a street person living in an alley near his foster family's home. He had a long history of mental illness and hospitalization for this illness. He had consistently been diagnosed as a schizophrenic. His most recent hospitalization was about two weeks before his arrest after he was seen in a tree near an elementary school screaming at the school children and yelling for the principal to meet his demands.

Appellee was known to the police to be suffering from mental illness. When the arresting officers came to observe the alley where appellee lived, his foster sister begged the officer to find help for appellee and to have him put away somewhere for his mental illness.

Upon his arrival at the Sex Crimes Unit, appellee was interviewed for background information. He was placed in handcuffs in a small detention room. He exhibited bizarre and psychotic behavior. The entire time he was in the detention room, he kicked the walls and the door, and he kept yelling inane comments, including that he was Ed Rendell's son and that he had dinner with Mr. Rendell the night before at Mr. Rendell's home. Mr. Rendell is the former District Attorney of Philadelphia and he is white. Appellee is black.

Appellee was initially interrogated in an office by a detective who knew that appellee suffered from mental illness. During this interrogation, appellee acted childishly. He refused to sit unless given a cigarette or soda and cookies. The detective ceased the interrogation and returned appellee to the detention room where appellee continued his bizarre behavior.

Appellee was interrogated again and he continued to display his childlike behavior. He was read the warnings mandated by Miranda v. Arizona, 384 U.S. 436 (1966), and he made incriminating statements. The court found that the interrogating detective knew that a statement was essential to the prosecution of the case. The victim had been unable to make a positive photo identification of appellee after his arrest. The court found that the detective skillfully manipulated appellee through a process of reward and punishment to make the statements.

At the hearing on the motion to suppress, the Commonwealth presented an expert who testified that appellee was capable of understanding his Miranda warnings and that he was capable of knowingly waiving his Fifth Amendment privilege against self-incrimination. Appellee presented two experts who testified to the contrary.

The court found after reviewing this testimony that appellee was incapable of understanding the significance of the Miranda

warnings and of making a competent waiver of his right to remain silent or of his right to have counsel present. The court accordingly concluded that the Commonwealth did not meet its burden to show a knowing waiver of the Constitutional right.

The Commonwealth contends that appellee voluntarily chose to speak after receiving Miranda warnings. The court, on the other hand, found that appellee did not voluntarily waive Miranda; it viewed his confession as the product of a deliberate effort on the part of the police detective to exploit appellee's mental weakness. We need not resolve this dispute. Regardless of whether a waiver of Miranda is voluntary, the Commonwealth must prove by a preponderance of the evidence that the waiver is also knowing and intelligent.

> Miranda holds that "[t]he defendant may waive effectuation" of the rights conveyed in the warnings "provided the waiver is made voluntarily, knowingly and intelligently." The inquiry has two distinct dimensions. First the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being adandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that Miranda rights have been waived.

Moran v. Burbine, 89 L Ed 2d 410, 421 (1986) (citations omitted). See also Edwards v. Arizona, 451 U.S. 477, 484 (1981); Tague v. Louisiana, 444 U.S. 469 (1980); Commonwealth v. Scarborough, 491 Pa. 300, ___, 421 A.2d 147, 153 (1980);

Commonwealth v. Cannon, 453 Pa. 389, 309 A.2d 384 (1973). Moreover, in reviewing an order granting a suppression motion, we are bound by the suppression court's findings of fact if the findings are supported by competent evidence. Commonwealth v. Hackney, ___ Pa. Super. ___, 510 A.2d 800 (1986).

With these principles in mind, we affirm the suppression court. The court found that appellee suffered from chronic undifferentiated schizophrenia and that this mental illness prevented him from understanding the Miranda warnings. The court also found that appellee was incapable of making a knowing and intelligent waiver of his privilege against self-incrimination. These findings are supported in the record by the testimony of Dr. Berman, appellee's expert. Dr. Berman based his opinion on a diagnosis of appellee after a personal interview and on appellee's previous mental health history. Dr. Berman's qualification as an expert was not challenged. Therefore, there is competent evidence to support the court's findings. Accordingly, the court correctly concluded that the Commonwealth failed to prove that appellee knowingly and intelligently waived his privilege against self-incrimination. We acknowledge that a Dr. Schwartzmann testified for the Commonwealth and disputed Dr. Berman's findings. However, this testimony only created a credibility issue. It is exclusively the province of the

suppression court to determine the credibility of the witnesses and the weight to be accorded their testimony. Commonwealth v. Neely, 298 Pa.Super. 328, ____, 444 A.2d 1199, 1205 (1982), overruled on other grounds, Commonwealth v. Holmes, 315 Pa. Super. 256, 461 A.2d 1268 (1983).

Finally, the Commonwealth contends that this case is controlled by Colorado v. Connelly, 93 L. Ed. 2d 473 (1986). In Connelly, a mentally ill defendant waived his Miranda rights because he believed that he was compelled to do so by the "voice of God." Id. at 480. The United States Supreme Court held that under the federal constitution this waiver would not be found to be involuntary in the absence of misconduct on the part of government officials. The Court, however, did not purport to decide whether Connelly's waiver was knowing and intelligent. See Id. at 487 n.4 (majority opinion) and at 488 n.5 (Brennan, J., dissenting). This remains a distinct and independent requirement for the admission of a confession into evidence. See Colorado v. Spring, 55 U.S.L.W. 4162, 4165 (U.S. Jan. 27, 1987).

In summary, federal law requires that a suppression court undertake a two step inquiry into the validity of a Miranda waiver. The court must first determine whether the waiver was voluntary in the sense of being the result of an intentional choice on the part of a defendant who had not been subject to undue governmental pressure. The court must then focus on cognitive factors to determine if the waiver was knowing and

intelligent - i.e. whether the defendant was aware of the nature of the choice that he made by giving up his Miranda rights.

In the case sub judice, the trial court found on the basis of credible evidence that appellee's confession was not made knowingly because he was incapable of comprehending the meaning of the Miranda warnings at the time he was interrogated. Accordingly, we affirm the suppression order. Cf. State v. Daily No. 16997, slip. op (W. Va. Dec. 16, 1986)(senile defendant with low intelligence and hearing loss did not knowingly waive Miranda).

Order affirmed.

Olszewski, J. files a Concurring Opinion.

J. 56037/86

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
	:	
MICHAEL CEPHAS,	:	
	:	
Appellant	:	No. 02288 Philadelphia 1984

Appeal from the Order of July 18, 1984, in the Court of Common Pleas of Philadelphia County, Criminal Division, at No. 83-11-221-226.

BEFORE: WICKERSHAM, OLSZEWSKI, and BECK, JJ.

CONCURRING OPINION BY OLSZEWSKI, J.:

Though agreeing with the majority's disposition of this particular case, I write separately to emphasize that this decision is limited to the facts of this case. The majority's holding does not establish a per se rule that an accused is incapable of waiving his constitutional rights whenever he asserts that he is suffering from a mental illness. Both this Court and our Supreme Court have recognized that the mental or physical deficiencies of an accused are not conclusive evidence of an accused's inability to waive his constitutional rights. See Commonwealth v. Glover, 488 Pa. 459, 412 A.2d 855 (1980) (there is no per se rule of inability to waive constitutional rights based on mental deficiencies); Commonwealth v. Neely, 298 Pa.Super. 328, 444 A.2d 1199 (1982) (a defendant may be suffering from a mental illness and still be capable of waiving his constitutional rights).

Trial judges, consequently, should be more wary of concluding that an accused is incapable of waiving his constitutional rights merely because he suffers from a mental illness. The trial judge must thoroughly examine all the circumstances surrounding the particular case to determine if the accused made a knowing and intelligent waiver. See Glover, supra.

COMMONWEALTH OF PENNSYLVANIA, APPELLANT : IN THE SUPERIOR COURT OF PENNSYLVANIA

V. :

MICHAEL CEPHAS : NO. 02288 PHILADELPHIA 1984

Appeal from the Order of July 18, 1984, in the Court of Common Pleas of Philadelphia County, Criminal Division, at No. 83-11-221-226.

BEFORE: WICKERSHAM, OLSZEWSKI AND BECK, JJ.

OPINION BY BECK, J.:

The Commonwealth appeals an order granting a suppression motion. The court suppressed appellee's statements after finding that appellee did not knowingly or voluntarily waive his privilege against self-incrimination. We affirm.

Appellee was arrested on October 7, 1983 and charged with rape, indecent assault, indecent exposure, unlawful restraint, terroristic threats, and simple assault. He moved to suppress two statements made to police during custodial interrogation. After a hearing, the motion was granted. The Commonwealth petitioned the court to reconsider. The court vacated its order pending reconsideration. The court denied the petition and reinstated its order granting the motion to suppress. This timely appeal followed.

Initially, we note that we have jurisdiction of this appeal from a pre-trial suppression order because the Commonwealth certified in good faith that the order terminated or substantially

handicapped its prosecution. Commonwealth v. Dugger, 506 Pa. 537, 486 A.2d 382 (1985).

Appellee was arrested on the basis of the victim's description. He was taken to the Sex Crimes Unit of the Philadelphia Police. At the time of his arrest, appellee was a street person living in an alley near his foster family's home. He had a long history of mental illness and hospitalization for this illness. He had consistently been diagnosed as a schizophrenic. His most recent hospitalization was about two weeks before his arrest after he was seen in a tree near an elementary school screaming at the school children and yelling for the principal to meet his demands.

Appellee was known to the police to be suffering from mental illness. When the arresting officers came to observe the alley where appellee lived, his foster sister begged the officer to find help for appellee and to have him put away somewhere for his mental illness.

Upon his arrival at the Sex Crimes Unit, appellee was interviewed for background information. He was placed in handcuffs in a small detention room. He exhibited bizarre and psychotic behavior. The entire time he was in the detention room, he kicked the walls and the door, and he kept yelling inane comments, including that he was Ed Rendell's son and that he had dinner with Mr. Rendell the night before at Mr. Rendell's home. Mr. Rendell is the former District Attorney and he is white.

Appellee is black. A photograph taken of appellee while in custody reflects his reaction to his arrest.

Appellee was initially interrogated in an office by a detective who knew that appellee suffered from mental illness. During this interrogation, appellee acted childishly and manipulatively. He refused to sit unless given a cigarette or soda and cookies. The detective ceased the interrogation and returned appellee to the detention room where appellee continued his bizarre behavior.

Appellee was interrogated again and he continued to display his childlike behavior. He was read his Miranda warnings and made incriminating statements. The court found that the interrogating detective knew that a statement was essential to the prosecution of the case. The victim had been unable to make a positive photo identification of appellee after his arrest. The court found that the detective skillfully manipulated appellee through a process of reward and punishment to make the statements.

At the hearing on the motion to suppress, the Commonwealth presented an expert who testified that appellee was capable of understanding his Miranda warnings and that he was capable of knowingly waiving his Fifth Amendment privilege against self-incrimination. Appellee presented two experts who testified to the contrary.

The court found after reviewing this testimony that appellee was incapable of understanding the significance of the Miranda

warnings and of making a competent waiver of his right to remain silent or of his right to have counsel present. The court accordingly concluded that the Commonwealth did not meet its burden to show a knowing waiver of the Constitutional right.

The Commonwealth contends that it complied with the mandates of Miranda v. Arizona, 384 U.S. 436 (1966) and that the statements obtained from appellee should be admissable at trial. Although the Commonwealth fervently argues that the Miranda rules were observed, the court found otherwise and concluded that appellee's statements were involuntary. We need not, however, review this finding. Aside from compliance with Miranda, the Commonwealth must also prove by a preponderance of the evidence that the accused knowingly and intelligently waived his Fifth Amendment privilege for statements that are the product of custodial interrogation to be admissable. Tague v. Louisiana, 444 U.S. 469 (1980); Johnson v. Zerbst, 304 U.S. 458 (1938); Commonwealth ex rel. Butler v. Rundle, 429 Pa. 141, 239 A.2d 426 (1968). Moreover, the Commonwealth must show that the accused was competent to make a knowing and intelligent waiver when the accused claims a lack of competence. See Commonwealth v. Cannon, 453 Pa. 389, 309 A.2d 384 (1973); LaFave & Israel, CRIMINAL PROCEDURE § 6.9(b), at 307 (1985). Also, in reviewing an order granting a suppression motion, we are bound by the suppression

court's findings of fact if the findings are supported by competent evidence. Commonwealth v. Hackney, ___ Pa.Super. ___, 510 A.2d 800 (1986).

With these principles in mind, we affirm the suppression court. The court found that appellee suffered from chronic undifferentiated schizophrenia and that this mental illness prevent appellee from understanding the Miranda-warnings. The court also found that appellee was incapable of making a knowing and intelligent waiver of his privilege against self-incrimination. These findings are supported in the record by the testimony of Dr. Berman, appellee's expert. Dr. Berman based his opinion on a diagnosis of appellee after a personal interview and on appellee's previous mental health history. Dr. Berman's qualification as an expert was not challenged. As such, there is competent evidence to support the court's findings. Accordingly, the court correctly concluded that the Commonwealth failed to prove that appellee knowingly and intelligently waived his privilege against self-incrimination. We acknowledge that Dr. Schwartzmann testified for the Commonwealth and disputed Dr. Berman's findings. However, this testimony only created a credibility issue. It is exclusively the province of the suppression court to determine the credibility of the witnesses and the weight to be accorded their testimony. Commonwealth v. Neely, 298 Pa.Super. 328, ____, 444 A.2d 1199, 1205 (1982), overruled on other grounds, Commonwealth v. Holmes, 315 Pa. Super.

256, 461 A.2d 1268 (1983).

The Commonwealth strenuously argues that the statements should be admitted because it complied with the Miranda requirements. Whether or not the Commonwealth complied with Miranda is not relevant. If the Commonwealth sustained its burden to prove compliance with Miranda, it had to also prove that a waiver was made knowingly and intelligently. Under these facts, part of this burden was to prove that appellee was competent to make a knowing and intelligent waiver. The burden to show competence was not met. Therefore, the burden to show a knowing and intelligent waiver was not met, and the statements were correctly suppressed.

Order affirmed.

Olszewski, J., files Concurring Opinion.

J. 56037/86

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
MICHAEL CEPHAS, Appellant	:	No. 02288 Philadelphia 1984

Appeal from the Order of July 18, 1984, in the Court of Common Pleas of Philadelphia County, Criminal Division, at No. 83-11-221-226.

BEFORE: WICKERSHAM, OLSZEWSKI, and BECK, JJ.

CONCURRING OPINION BY OLSZEWSKI, J.: FILED DEC 15 1986

Though agreeing with the majority's disposition of this particular case, I write separately to emphasize that this decision is limited to the facts of this case. The majority's holding does not establish a per se rule that an accused is incapable of waiving his constitutional rights whenever he asserts that he is suffering from a mental illness. Both this Court and our Supreme Court have recognized that the mental or physical deficiencies of an accused are not conclusive evidence of an accused's inability to waive his constitutional rights. See Commonwealth v. Glover, 488 Pa. 459, 412 A.2d 855 (1980) (there is no per se rule of inability to waive constitutional rights based on mental deficiencies); Commonwealth v. Neely, 298 Pa.Super. 328, 444 A.2d 1199 (1982) (a defendant may be suffering from a mental illness and still be capable of waiving his constitutional rights).

Trial judges, consequently, should be more wary of concluding that an accused is incapable of waiving his constitutional rights merely because he suffers from a mental illness. The trial judge must thoroughly examine all the circumstances surrounding the particular case to determine if the accused made a knowing and intelligent waiver. See Glover, supra.

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CRIMINAL TRIAL DIVISION

- - -

COMMONWEALTH	:	NOVEMBER TERM, 1983
	:	
	:	0221 Indecent Exposure
	:	0222 Indecent Assault
	:	0223 Rape
	:	0224 Unlawful Restraint
	:	0225 Terroristic Threats
MICHAEL CEPHAS	:	0226 Simple Assault

- - - -

July 25, 1984

Courtroom 436, City Hall

Philadelphia, Pennsylvania

- - - -

BEFORE: HONORABLE BERNARD AVELLINO, J.

- - - -

APPEARANCES:

SARAH VANDENBROOK, ESQUIRE
Assistant District Attorney
For the Commonwealth

JULES EPSTEIN, ESQUIRE
Assistant Public Defender
Counsel for the Defendant

- - - -

EXHIBIT "C"

At this time I will give you my Findings of Fact. There will be no Findings of Fact on the issue of probable cause to arrest the defendant as that issue is not seriously challenged by the defendant at no time. Someone can always re-file.

The Findings of Fact will all relate to the defendant's capabilities of knowingly and voluntarily waiving his constitutional rights.

The Findings of Fact are as follows:

One, Michael Cephas, 23-year-old defendant was arrested on October 7th, 1983, was on the streets of the City and County of Philadelphia.

Two, following his arrest he was taken to the Sex Crimes Unit, Frankford and Castor Avenues and placed in a small detention

room in handcuffs in anticipation of questioning about a reported rape at the chapel of the University of Pennsylvania Hospital on 7/29/83. He, at the time of his arrest and detention, Michael had an extensive history of profound mental illness. He had consistently been diagnosed as a schizophrenic of the most serious type.

Michael spent from October the 7th, 1982 to November the 5th, 1982 at Philadelphia Psychiatric Center. Again in August of 1993 he was taken to Saint Mary's Hospital by the Philadelphia police where he was found naked on a scaffold sixty feet up in the area of City Hall.

On September 21st 1983, he was again taken by the police to Saint Mary's because he was up in a tree and by an elementary school screaming at the school children and yelling for the principal to meet his demands. According to the records of Saint Mary's Hospital that was his fourth hospital admission for psychiatric psychotic episodes in that institution alone.

The Court notes the proximity in time of his arrest of October the 7th.

Four, at the time of his arrest Michael was a street person. He lived in an alley not far from the home of his foster family. In this alley he kept a series of costumes neatly arranged in bags and stacks. He has been known by police to dress as Moses, a preacher, a lumberjack who could climb buildings and trees and punk rocker.

Five, when the arresting officers came to observe the alley where Michael lived his foster sister begged the officer to find help for Michael and to have him put away somewhere for his mental illness.

Six, Michael's behavior when he was at the interrogation by the police at the police headquarters and during his confinement in the detention room was bizarre and psychotic. The entire time he was put in a small detention room handcuffed, he kicked the door, walls and kept yelling inane comments, including that he was Ed Rendell's son, that he had dinner with his father the night before at Mr. Rendell's home,

Mr. Rendell who is the D.A. for the City and County of Philadelphia.

Seven, the photograph taken of Michael when he was taken into custody reflects his reaction to this predicament.

Eight, during the first interrogation Michael acted very childishly and manipulatively. He refused to sit down unless he was given a cigarette. He wanted the police to give him a soda and cookies. He was unable to take the questioning seriously. And the interrogating officer finally abandoned the interview believing him to be pompous.

Nine, during the absence of the assigned detective Michael continued his earlier impulsive childhood behavior again in the detention room.

Ten, the assigned detective during her absence was unable to obtain an identification of Michael by his alleged victim despite the fact that the victim had been face-to-face with her assailant for forty-five minutes and had earlier provided data to a police artist which resulted in a positive

sketch which led to Michael's arrest and detention.

Eleven, the assigned detective knew that upon her return to the Sex Crimes Unit that unless Michael confessed to the crime she would have to release him.

Twelve, Michael stopped hollering and banging, but when he was released from the Detention Center he did, however, continue child-like behavior. He did, for example, remain standing despite instructions to sit and he continued his defiance until he was prodded by a cigarette. He was moreover given cookies and soda to reinduce him to adopt a more cooperative attitude.

Thirteen, prior to his being given cigarettes, cookies and soda, Michael was read the Miranda Warnings to which he gave verbal responses ostensively suggesting he wished to surrender his right to remain silent and/or to counsel.

Fourteen, Michael's psychosis includes a split personality. The other person inhabiting Michael's body is named Johnny

Johnson.

Fifteen, prior and during Michael's interview the assigned detective knew that Michael was suffering from a profound major mental illness.

Sixteen, the assigned detective skillfully manipulated Michael's mind through a process of reward and punishment.

Seventeen, Michael was held for a series of suggestive and leading questions which resulted in his making an incriminating statement.

Eighteen, despite continued cajoling by the assigned detective, Michael refused to sign the statement because he was no longer receiving any reward or punishment.

Nineteen, the expert testimony was in agreement on one point, and that was that Michael is suffering with serious schizophrenia. His behavior during the interrogation is consistent with this diagnosis.

All experts agree that medication can help control such symptoms but there is no substantial evidence this Court found credible

that any drugs had been administered to this defendant and his behavior at the time of the interviews suggest just the opposite.

Twenty, Michael's conduct during the interrogation shows conclusively that he did not appreciate legal jeopardy of this position. His childish and manipulative behavior and long history of mental illness is convincing he is not in touch with reality of the situation and he could not understand the significance of his so-called Miranda Warnings or competently waive his rights to remain silent or to have counsel present.

Conclusions to be drawn from the following Findings of Fact is that the defendant, Michael Cephas, was not capable of knowingly and voluntarily waiving his constitutional rights when he made the statement to the police after receiving his so-called Miranda Warnings.

The Commonwealth had the burden to prove by the preponderance of the evidence the defendant's statement was a knowing and voluntary waiver of his right not to incriminate himself. The Commonwealth did not meet that

burden in the Court's view.

It is, of course, my responsibility to determine credibility and weight of the witnesses before their testimony. The Court is mindful of a line of cases which suggest in these cases that mentally ill people can voluntarily surrender their right. Notwithstanding that case, the Court is satisfied with this decision in this particular case Michael was incapable at the time that he was interviewed to waive his rights.

NO. 87-648

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

COMMONWEALTH OF PENNSYLVANIA,
Petitioner

v.

MICHAEL CEPHAS,
Respondent

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

	PAGE
Table of Supplemental Authorities	ii
Supplemental Argument	
All issues presented in the Petition for Writ of Certiorari were raised in and passed upon by the Pennsylvania courts.	1-5
Conclusion	6

TABLE OF
SUPPLEMENTAL AUTHORITIES

	PAGE
Dewey v. DeMoines, 173 U.S. 193 (1899)	5
Illinois v. Gates, 462 U.S. 213 (1983)	2,5
Johnson v. Zerbst, 304 U.S. 458 (1938)	1,4

NO. 87-648

IN THE
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REPLY BRIEF FOR PETITIONER

SUPPLEMENTAL ARGUMENT

ALL ISSUES PRESENTED IN THE PETITION FOR WRIT OF CERTIORARI WERE RAISED IN AND PASSED UPON BY THE PENNSYLVANIA COURTS.

Respondent claims that this Court cannot review Johnson v. Zerbst, 304 U.S. 458 (1938), to determine whether the analysis in that opinion applies Miranda's prophylactic rule (Respondent's Brief in

Opposition at 8). Specifically, respondent claims that such a legal review would constitute consideration of a distinct legal issue not presented in the state courts. This argument lacks factual or legal merit.

In Illinois v. Gates, 462 U.S. 213 (1983), this Court declined to consider whether the fourth amendment exclusionary rule should be applied where the police acted in good faith. It declined to review this issue because the petitioner had not raised in the state courts the question of whether the exclusionary rule was "appropriate in a particular context" in addition to the separate question of "whether the Fourth Amendment rights of the party ... were violated by police conduct." 462 U.S. at 223.

Here, petitioner properly raised the separate issues of (1) whether respondent demonstrated a sufficient understanding of his situation to permit a proper waiver of

the Miranda warnings, and (2) whether the exclusionary rule was appropriate where the police acted in good faith and scrupulously complied with the law. Both issues were argued by petitioner to the trial court (see Superior Court Reproduced Record at 11A-14A, 266A-272A), to the Pennsylvania Superior Court (see Brief for Appellant at 11-20) and in its request for discretionary review by the Pennsylvania Supreme Court (see Petition for Allowance of Appeal at 9-17). The Pennsylvania courts rejected petitioner's claims, deeming the critical issue to be whether the psychiatric evidence supported a finding that respondent did not knowingly and intelligently understand the Miranda warnings.

Throughout this litigation, petitioner has consistently asserted (1) that respondent's objective behavior evidenced a sufficient understanding of the Miranda warnings and (2) that suppression was

inappropriate because the police actions were lawful and proper. These arguments necessarily imply the converse -- that suppression is inappropriate even if a defendant does not subjectively possess a knowing and intelligent understanding of the Miranda warnings. Quite simply, once petitioner asserted that the relevant inquiry was respondent's objective behavior and the propriety of the police behavior, petitioner hardly was required to list every factor he believed to be irrelevant. Likewise, petitioner was not required to distinguish every case upon which respondent might rely to support his claim.

Thus, respondent incorrectly claims that this Court cannot review the Johnson v. Zerbst opinion to determine whether its waiver analysis applies to Miranda claims. Such a legal review of case law is merely an enlargement of the issues squarely presented to and rejected by the state

courts.[1] Because petitioner properly raised in the state courts all of the issues presented in its petition for certiorari, the instant case is particularly appropriate for this Court's review.

---

[1] In Dewey v. DeMoines, 173 U.S. 193, 197-198 (1899) (cited in Illinois v. Gates), this Court explained that

> [i]f the question were only an enlargement of the one mentioned in the assignment of errors, or if it were so connected with it in substance as to form but another ground or reason for alleging the invalidity of the [lower court's] judgment, we should have no hesitation in holding the assignment sufficient to permit the question now raised and argued. Parties are not confined here to the same arguments which were advanced in the courts below upon a federal question there discussed.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in its Petition for Writ of Certiorari, the Commonwealth of Pennsylvania respectfully requests that this Court issue a Writ of Certiorari to review the decision below.

Respectfully submitted,

GAELE McLAUGHLIN BARTHOLD
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(Counsel of Record)
SARAH B. VANDENBRAAK
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